

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SAM GWIN, JR.,

Petitioner,

-vs-

Case No. 15-C-1140

WILLIAM POLLARD,¹

Warden of Dodge Correctional Institution

Respondent.

DECISION AND ORDER

Pro se Petitioner Sam Gwin Jr. filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 “for ineffective assistance by appellate counsel” (Pet. 1, ECF No. 1) and subsequently paid the \$5 filing fee. Thereafter, he filed a motion to stay his petition pending exhaustion of his grounds with the Wisconsin Supreme Court. (ECF No. 6.)

Gwin’s habeas petition states that, after filing a direct appeal and seeking the Wisconsin Supreme Court’s review of that decision, he filed a *Knight* petition, *see State v. Knight*, 168 Wis.2d 509, 520, 484 N.W.2d 540, 544 (Wis. 1992) (holding that proper way of raising an ineffective assistance of appellate counsel claim is to file petition for habeas corpus in court of appeals that heard the direct appeal) was denied by the Wisconsin Court of

¹ The Court has substituted William Pollard for Marc Clements as the Respondent. *See R. 2(a)* Governing § 2254 Cases Dist. Cts.

Appeals on September 9, 2015. State court records, of which the Court takes judicial notice pursuant to Fed. Evid. R. 201, also indicate that on November 24, Gwin's request for additional time to file a petition for review was denied. *See* <http://wscca.wicourts.gov/> (last visited Jan. 15, 2016). Based on that ruling, Gwin is foreclosed from seeking further review of the Wisconsin appeals court ruling. Therefore, Gwin's motion for a stay is denied as moot.

Additionally, from review of Gwin's petition, it does not plainly appear that he is not entitled to relief. *See* R. 4 Governing § 2254 Cases Dist. Cts. Therefore, Respondent William Pollard will be required to file an answer, motion or other response to the instant petition that contains the materials required by Rule 5 of the Rules Governing § 2254 Cases in the District Courts.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Gwin's motion for a stay (ECF No. 6) is **DENIED**;

On or before March 29, 2015, Pollard must file an answer, motion or other response to the instant petition.

Dated at Milwaukee, Wisconsin, this 20th day of January, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge